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January 16, 2014

**HAND DELIVERED**

Bridget C. Asay, Esq.  
Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609

Re: State of Vermont v. MPHJ Technology Investments, LLC  
Docket No. 2:13-cv-170

Dear Bridget:

We are writing to apprise you of certain recent legal developments relevant to the above-captioned case that make it clear the State may no longer maintain its prosecution of that case in good faith and should dismiss it. We explain this position briefly below. We also provide you with the Motion for Sanctions that we intend to file pursuant to Fed. R. Civ. P. 11 (and 28 U.S.C. § 1927) at the conclusion of the 21-day safe harbor provision of that rule, should the State by that time not have dismissed this case. The preference of my client is that this matter be resolved without the necessity of filing this Motion, but if a resolution is not possible, we do intend to file it and are confident that it will be ruled upon favorably.

As you may be aware, on December 13, 2013, the Vermont Supreme Court issued its decision in *Foti Fuels, Inc. v. Kurrle Corp.*, 2013 VT 111 (Vt. 2013). As we explain in more detail in the accompanying Motion, the Foti decision renders it beyond doubt that the VCPA does not apply to patent licensing activity, at least of the type you have accused in this case. As such, it is plain that a federal district court applying Vermont state law, or that a Vermont state court, would each have to reach the same conclusion that your Complaint under the VCPA fails to state a claim upon which relief can be granted and would have to be dismissed. On this basis alone, we believe that if you do not dismiss this case, and you persist in maintaining this case in the face of the Foti decision, that such an action would be per se in bad faith, and would constitute vexatious and frivolous litigation that warrants sanctions. We believe you can reasonably cite Foti as a change in circumstances that justifies your dismissal of this suit without your conceding that the case was frivolous from the outset.

Second, and independently, on January 14, 2014, the U.S. District Court for the District of Nebraska issued an Order granting a preliminary injunction against the Attorney General for



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the State of Nebraska from taking any steps to impede or interfere with MPHJ's patent licensing activity identical to the conduct you are accusing in this case. In that decision, the Court held that MPHJ's conduct was neither objectively baseless nor subjectively baseless, and was protected free speech under the First Amendment. It may be of interest to you that in the briefing leading to that decision, every single allegation made by the State of Vermont in this case was presented to the Nebraska District Court, who still found in the face of those allegations that the application of state law to MPHJ's activity is preempted under the First Amendment. Given this decision, and given that you have not contended (and cannot legitimately contend under Rule 11) that MPHJ's conduct was objectively baseless, it seems plain that there is no set of circumstances under which the State of Vermont can prevail on its claim. As the Nebraska District Court has now found, the application of any state law to MPHJ's conduct is preempted. On these circumstances, if the State does not dismiss this case, and persists in maintaining this case in the face of the holding by the federal courts that MPHJ's conduct is protected free speech, such an action would be in per se bad faith, and would, again, constitute vexatious and frivolous litigation that warrants sanctions. Here as well, we believe you can reasonably cite the decision by the Nebraska District Court finding that preemption applies as a change of circumstances that justifies your dismissal of this suit without your conceding that the case was without merit from the outset.

Should you persist in this case given these recent developments, you should be aware we will not only seek the sanctions sought by the attached Motion under Fed. R. Civ. P. 11 and 28 U.S.C. § 1927, but we also believe that we will have the right to bring an action against you in federal court for violation of MPHJ's constitutional rights under 42 U.S.C. § 1983. The Nebraska Federal Court has now ruled that the Nebraska Attorney General, in the issuance of an injunctive order against MPHJ's patent licensing activity essentially identical to the relief being sought by you in this case, violated MPHJ's constitutional rights, and violated 42 U.S.C. § 1983. The Court has made it clear that, in addition to the preliminary injunction that has now been entered, that a permanent injunction will be entered in short order, and that the parties are to brief the question of whether MPHJ shall be awarded its fees and costs in connection with the misconduct of the Nebraska Attorney General. We believe that such fees and costs are likely to be awarded.



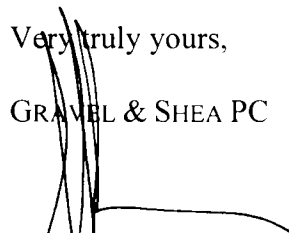
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We look forward to a decision by you regarding dismissal of your case.

Very truly yours,

GRAVEL & SHEA PC



Andrew D. Manitsky

ADM:lbb

Enclosure